

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 28, 2007 Session

STATE OF TENNESSEE v. ROYAL T. FREEMAN

Appeal from the Circuit Court for Blount County
No. C-15145 D. Kelly Thomas, Jr., Judge

No. E2006-00792-CCA-R3-CD - Filed August 10, 2007

A Blount County indictment charged the defendant, Royal T. Freeman, with the premeditated first degree murder, *see* T.C.A. § 39-13-202(a)(1) (2006), of his wife, Kathleen Freeman. The jury convicted the defendant of second degree murder. *See id.* § 39-13-210. On appeal, the defendant argues that the evidence is insufficient to support a verdict of second degree murder and that the trial court erred in allowing the jury to consider the charge of premeditated first degree murder. After thoroughly reviewing the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

Raymond Mack Garner, District Public Defender (at trial); and J. Liddell Kirk, Knoxville, Tennessee (on appeal), for the Appellant, Royal T. Freeman.

Robert E. Cooper, Jr., Attorney General & Reporter; Brian Clay Johnson, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Tammy Harrington, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The State's evidence showed that on July 10, 2004, the defendant called 9-1-1 and informed the dispatcher Susie Dunn that he had shot his wife. Alcoa Police Officer Ronald Boruff first arrived at 108 McGinley Street, the defendant's residence, and saw the defendant in the front yard talking on his cellular telephone. Officer Boruff arrested the defendant, and as he did so, the defendant stated that he could not shoot himself. Officer Boruff put the defendant in his cruiser and then found the victim shot to death inside the residence. He also found a pistol lying on the kitchen table with spent ammunition and one live round.

Alcoa Police Detective Joe Thornhill testified that when he arrived at the scene, he had the defendant sign a *Miranda* rights waiver form and then interviewed the defendant, who confessed to shooting his wife because he wanted to stop her from harassing people, namely the neighbors.

Detective Thornhill entered the house and saw the victim's body and several bullet wounds. He also testified that he saw the .357 handgun on the kitchen table with five spent rounds and one live round of ammunition. Detective Thornhill further testified that he found an empty gun case on the bedroom floor next to the bed that fit a .357 Smith and Wesson handgun. He testified that from this bedroom he could see the chair where the victim's body was found. Also, Detective Thornhill inspected the defendant's shed and found equipment for reloading ammunition.

On cross-examination, Detective Thornhill testified that during the defendant's interview, the defendant was "upset," but "relatively calm." Detective Thornhill testified that officers found other guns in the residence and \$2,500 in the victim's purse lying on the kitchen table. He also stated that the defendant told him that he had planned on killing himself, but he could not go through with it. The defendant also told Detective Thornhill on several occasions that he had not planned the shooting.

Tennessee Bureau of Investigation (TBI) Agent Robert Daniel Royse, a forensic firearms specialist, testified that he examined the .357, spent shells, live bullet, and victim's shirt. He determined that the shells and bullet appeared to be "reloaded ammunition" done by special reloading equipment. Agent Royse testified that the victim's shirt had several bullet holes in it. He concluded that the four holes to the upper chest were caused by gunshots 18 inches away from the body, the three holes lower on the shirt were from a distance less than five feet away, and the number of holes in the shirt did not correspond to the number of gunshots. He determined that defendant had fired a total of five shots.

Alcoa Police Officer Debra Degregorio testified that she collected evidence from the scene, including the shirt the defendant wore on July 10, 2004. She testified that the TBI lab report determined that the blood on the defendant's shirt was the victim's.

Doctor Darinka Mileusnic-Polchan performed the autopsy on the victim's body and testified that she found neither alcohol nor illegal drugs in the victim's blood. She stated that the cause of death was five gunshot wounds. Doctor Mileusnic-Polchan testified that she could not determine the order in which the wounds were received; thus, she described them in terms of body location. She testified that one bullet entered the upper chest region and was fired from close range. A second shot exited and re-entered the body affecting the chest and abdominal region. Both of these bullets exited the back of the body. A third shot entered the right side of the body close to the midline, and the other two bullets entered the pelvic region. Two of these three shots also exited the body, and only one bullet remained inside. The witness explained that four of the five shots created potentially survivable wounds; however, the close-range shot to the upper chest affected the heart and one lung, and upon infliction, it would have rendered the victim immediately unconscious.

The defendant presented several witnesses, including the defendant's and victim's youngest son and two of the victim's sisters, who testified that the victim was mentally ill. They testified that the Freeman family had to move constantly because the victim would harass neighbors and the neighbors' pets, yelling threats and obscenities. The victim was hospitalized twice, improved during these stays, continued to do well shortly after the stays, but regressed upon refusing to continue taking medication and attend follow-up appointments. The witnesses testified that the victim's condition worsened with time, and she eventually refused to speak with her family members and forbade the defendant from speaking with or visiting any of his family members. These witnesses described the defendant as very calm. They testified that he did all of the household chores and took care of the children, taking them to appointments and providing for their needs. He also maintained employment.

The defendant testified that he received weapons training while enlisted in the United States Navy. After his honorable discharge, he worked several jobs until settling into his position as an officer with the Pennsylvania Department of Corrections. He worked there for at least 18 years and received weapons training every year. He retired in 2002, and he and the victim moved to Tennessee.

The defendant also testified that he married the victim in 1973, and she was "educated, smart, and beautiful." He stated that she began to develop mental problems after the birth of their first son. She gradually got worse, and he constantly took care of her, the children, and the house. The victim never drove, but she did handle the family finances. The defendant testified that the victim thought she was being watched inside their home; thus, she always kept the curtains drawn. The victim would yell obscenities and threats at the neighbors. Because of this, they constantly had to move. Many times the police came to their house and even cited the victim for her disruptive behavior. The defendant would take her to court, and he paid many fines for her. The defendant also testified that the victim would do better during hospitalization and when she was medicated. However, he could not convince her to take her medication, and when she refused to do so, her condition would worsen.

The defendant further testified that the victim would constantly talk to and answer herself. He stated that she would come close to physical violence, but she never actually hit anyone. On one occasion, she grabbed knives from the kitchen and attempted to go outside after some people, but the defendant blocked her from the door. On other occasions, she destroyed her oldest son's room, tore down the Christmas tree, and purposefully broke things around the house. The victim also refused to talk to her parents and siblings, and eventually, she forbade the defendant from speaking to or visiting with his parents and siblings. In addition, the victim blamed the defendant for everything that went wrong. The defendant testified that he always attempted to calm the victim, and he usually would take her for a ride in the car, to the movie theater, or to a restaurant. The defendant further testified that he did not divorce her because he loved her, he was Catholic, and he knew that there was no one else to care for her.

When the defendant and the victim moved to Tennessee, the victim behaved rationally at first; however, she soon began “picking her targets” in the neighborhood to harass. She again began telling the defendant that everything was his fault and that she hated him. She stated that one of their neighbors was videotaping them, others were “drug dealers,” and one lady was a “witch” and her daughter a “whore.”

On July 10, 2004, the defendant was supposed to take the victim somewhere though he did not recall where. He stated that he was at the kitchen table drinking coffee and that the victim began complaining about a truck and a lawn mower making noise. The victim ran outside and started yelling. Eventually, the defendant asked her to leave the neighbors alone, and the victim responded, “I’m not going to f---ing leave them alone, I’ve been waiting 6 months for this.”

Ultimately, the victim came inside, sat in her chair, and said she was sick of the noise. The defendant left the kitchen table, went to the bathroom, and then went to the bedroom and got his already loaded handgun. He walked up to his wife and shot her. He testified that he was not mad, they did not argue, and she was smiling. The defendant testified that he shot her because he felt her abuse and harassment would never stop. He watched her die in her chair, and he testified that it all happened in less than a minute.

The defendant then called 9-1-1, unloaded the weapon, saw one live round, and thought of killing himself; however, he stated that he could not go through with it. The defendant also testified that he had never hurt his wife before, and he had lost his patience during neither his service in the Vietnam War, the prison riots at his job, nor with his wife. He stated that it was wrong to shoot his wife, he loved his wife, and it was the worst thing that he had ever done.

On cross-examination, the defendant testified that when the victim came inside after yelling at the neighbors, the victim started pacing and finally sat in her chair. The defendant used the bathroom, walked into his bedroom, went to the other side of the bed, and got his loaded gun from the gun case. He then walked into the living room and shot his wife. He said that she did not say anything to him and that she was smiling. The defendant testified that he shot her “center mass” as he had been trained to do. He further testified that he saw her take her last breath.

The defendant testified that he did not know when he decided to kill his wife. He stated that the situation was like a “daze” to him. The defendant also testified that he was unaware that a sixth round was live until he unloaded the gun. At that point, he thought about killing himself but was unable to do so.

Clinical psychologist John Kandilakis testified that the victim was severely mentally ill. He would diagnose her as a paranoid schizophrenic and stated that her condition gradually worsened over the course of the defendant’s and the victim’s marriage. He explained that living with the victim would have been “extremely difficult.” He testified that the defendant tended to “play things down, tend to overlook them” and that he was “pleasant, he’s agreeable, [and] hardworking.” Doctor Kandilakis testified that the defendant did not actively deal with situations, and he avoided

conflict. Because of this and because his wife refused medication to control her illness, the defendant started feeling exhaustion and became severely depressed. He further testified that the defendant felt isolated because he did not have many friends and did not have contact with his family. This in turn made him resentful. Doctor Kandilakis also testified that the psychological injuries inflicted upon the defendant by the victim were “quite severe.” He testified that the defendant was horrified at what he had done.

In rebuttal, the State called the two neighbors who the victim had allegedly yelled at on July 10, 2004. Neither recalled the victim yelling at them on that morning.

The jury acquitted the defendant of premeditated first degree murder but found him guilty of second degree murder. He filed a timely notice of appeal and argues that the evidence is insufficient to support a second-degree murder conviction and that the trial court erred in allowing the jury to consider the charge of premeditated first degree murder.

I. Sufficiency of the Evidence

When an accused challenges the sufficiency of the evidence, an appellate court’s standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). The rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654.

In determining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Id.* at 655. Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

Second degree murder is “[a] knowing killing of another.” See T.C.A. § 39-13-210(a)(1). A knowing act requires one to be “aware of the nature of the conduct” and “aware that the conduct is reasonably certain to cause the result.” *Id.* § 39-11-302(b).

Here, the evidence was sufficient to support a verdict of second degree murder, a knowing killing. The evidence showed that the defendant had received weapons training in the military and with his job. He testified that he walked to the bedroom, got his loaded gun, and shot his wife “center mass.” He watched her take her last breath, and then he called 9-1-1. The jury rejected his claim of provocation. Thus, a rational trier of fact could reasonably conclude that the

defendant knowingly killed the victim. From all of his training and experience, he was “aware that [his] conduct [was] reasonably certain to cause the result, [death].” *Id.* § 39-11-302(b).

II. Consideration of Premeditated First Degree Murder

The defendant argues that the “trial court erred in allowing the jury to consider the charge of first degree premeditated murder.” However, the defendant fails to cite authority to support his claim. Tennessee Rule of Appellate Procedure 27(a)(7) states, “The brief of the appellant shall contain . . . [a]n argument . . . with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on” Tenn. R. App. P. 27(a)(7). Furthermore, Tennessee Court of Criminal Appeals Rule 10(b) states, “Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.” Tenn. Ct. Crim. App. R. 10(b). Therefore, the defendant waived this issue.

We also note that the record fails to include a transcript of the instructions as read to the jury. *See* Tenn. R. App. P. 24(b). It is the appellant’s obligation to prepare a record that will allow for meaningful review upon appeal. *See id.* We cannot consider an issue unless the record contains a fair, accurate and complete account of what transpired below relevant to that issue. *State v. Ballard*, 855 S.W.2d 557, 560-561 (Tenn. 1993).

Nevertheless, we hold that the trial court did not err in allowing the premeditated first degree murder charge to go to the jury. There was evidence in the record from which the jury could have decided that the killing was premeditated.

III. Conclusion

Upon the foregoing analyses, we affirm the judgment of the trial court.

JAMES CURWOOD WITT, JR., JUDGE